

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DUANE GRIMES**, on March 25, 2003 at  
8:00 A.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Duane Grimes, Chairman (R)  
Sen. Dan McGee, Vice Chairman (R)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)  
Sen. Gary L. Perry (R)  
Sen. Mike Wheat (D)

**Members Excused:** Sen. Jeff Mangan (D)

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 521, HB 489, HB 496, 3/20/2003  
Executive Action: HB 224, HB 141, HB 155, HB 496, HB  
308, HB 358, HB 390, HB 521, HB 61

**EXECUTIVE ACTION ON HB 224****Discussion:**

**CHAIRMAN GRIMES** suggested striking 3-5-123 in its entirety. He commented that it didn't add anything substantive to the statute. Currently the code addresses the appointment and compensation of the three standing masters. Those three would continue to exist and any new appointment would need to come before the Legislature.

**Chief Justice Karla Gray** remarked it would be much cleaner to repeal Section 3-5-123. This would leave the currently existing standing masters as state employees under state assumption. This section is inconsistent with current law under state assumption.

**SEN. WHEAT** questioned how the judges would handle a need for a special master. **Chief Justice Gray** understood under state assumption the branch would need to propose an additional FTE to the Legislature as part of their budget. There is still an opportunity in the authority found under 3-1-126. This would cover the local government's ability to create and fund a standing master if the state was unable to provide one.

**Motion:** **SEN. O'NEIL** moved that **HB 224 BE CONCURRED IN.**

**Discussion:**

**SEN. O'NEIL** questioned the difference between a standing master and a special master. **Chief Justice Gray** explained this particular statute only addressed standing masters. This statute would not address special masters brought along for a particular case and a particular purpose.

**Motion:** **SEN. CROMLEY** moved that **HB 224 BE AMENDED.**

**Discussion:**

**SEN. CROMLEY** remarked the amendment would strike Section 1 of HB 224.

**Ms. Lane** claimed the amendment would be to strike Section 1 from the bill. On page 1, line 28, "section" would be changed to "sections" and the language "Section 3-5-123 and 3-7-302 are repealed." Appropriate changes would need to be made to the title.

**SEN. CROMLEY** noted that in a reapportionment of district judges which may be considered in the future, consideration needs to be given to the fact that there are three standing masters who take some of the workload from the judges.

**Vote:** The motion carried unanimously.

**Motion/Vote:** **SEN. O'NEIL** moved that **HB 224 BE CONCURRED IN AS AMENDED**. The motion carried unanimously.

**EXECUTIVE ACTION ON HB 141**

**Motion:** **SEN. PERRY** moved that **HB 141 BE CONCURRED IN**.

**Substitute Motion:** **SEN. WHEAT** moved that **HB 141 BE AMENDED, HBO14101.av1, EXHIBIT(jus63a01)**.

**Discussion:**

**Ms. Lane** explained new section 1 created a new offense entitled "fleeing from or eluding a peace officer". Subsection (2) of the new section 1 sets out the penalty and states they shall be imprisoned for a term not to exceed one year or fined an amount not to exceed \$2,000 or both. **REP. LANGE** requested an amendment that would say if the person causes serious bodily injury to or death of another person or causes property damage in excess of \$1,000 the penalty would be imprisonment for a term not to exceed two years or fined an amount not to exceed \$2,000 or both.

**SEN. MCGEE** asked why causing a death would not be homicide. **Ms. Lane** noted there was a vehicular homicide provision. This may be why the House left the bill as introduced and did not include this provision.

**CHAIRMAN GRIMES** believed the prosecutor would charge the higher offense if possible. There may be cases where that offense would not work for the prosecution. This would be a backup plan.

**SEN. WHEAT** maintained this needed to be consistent with the penalties for the other serious crimes. If a bumper was torn off a car and it cost \$1,002 to repair, this would now be considered a felony. He would agree to raising the penalty for serious bodily injury or death but would strike the language about property damage in excess of \$1,000.

**SEN. MCGEE** maintained 45-5-205 speaks to negligent vehicular assault. A person who negligently operates a vehicle, other than a bicycle, while under the influence of alcohol, dangerous drugs or any other drug or any combination of the three, as provided

for, etc. This would limit negligent vehicular assault and would involve the use of a chemical. The fines are an amount not to exceed \$1,000 and a term in the county jail not to exceed one year. This would still be a misdemeanor. A person convicted of the offense of negligent vehicular assault who causes serious bodily injury to another shall be fined not to exceed \$10,000 and incarceration not to exceed ten years or both and pay restitution. The concept of seriously injuring or killing someone while fleeing from an officer is not envisioned in negligent vehicular assault.

**Ms. Lane** added HB 105 creates almost the same offense created in HB 141. It creates an offense called "eluding a peace officer". It provides the penalty is the same as negligent vehicular assault. She coordinated the two bills. On page 2 of HB 105, 45-5-205 is amended to state that eluding a peace officer will be penalized as provided in that section.

**CHAIRMAN GRIMES** questioned whether the title of HB 141 would be broad enough to amend 45-5-205.

**Ms. Lane** believed the amendment would be okay under the title.

**Substitute Motion:** **SEN. WHEAT** moved that **HB 141 BE AMENDED.**

**Discussion:**

**SEN. WHEAT** explained his amendment. At the end of line 3, he would strike the language "or causes property damage in excess of \$1,000". On the following line he would strike the word "2" and insert the word "10". On the following line he would strike "\$2,000" and insert "\$10,000". This will make it consistent with the statutes being reviewed by the Committee.

**{Tape: 1; Side: B}**

**SEN. PERRY** noted in the course of fleeing an officer, if serious injury or death occurred as a result, this would be another charge.

**Ms. Lane** affirmed the person would have gone way beyond simply fleeing an officer and once serious bodily injury or death occurred, other kinds of offenses could be involved.

**SEN. PERRY** remarked perhaps the amendment was not necessary.

**SEN. MCGEE** maintained the problem was negligent vehicular assault is tied to being under the influence of alcohol, dangerous drugs, or other drugs, or any combination of the three. This offense

could only be charged if the person fleeing was also under the influence. House Bill 105 would amend vehicular assault. It will probably address the items of \$10,000 and ten years. It would also be placed in 45-5-205.

**Ms. Lane** pointed out HB 105 would include causing bodily injury to another while eluding a peace officer as negligent vehicular assault and it would be punished as provided in that section. It does not address death to another.

**SEN. MCGEE** claimed his understanding of HB 105, Section 1, is that it is amending negligent vehicular assault to include causing bodily injury to another person while eluding a police officer. If the term "death" was included, everything in HB 141 would be covered. He further noted that since the Chairman was on the Transportation Committee, he would know the issues involved when action was taken on HB 105. In this respect, we would end up with a good code and not have two bills competing with one another.

**CHAIRMAN GRIMES** raised a concern HB 105 may be leaving out some language involved in HB 141.

**SEN. PERRY** remarked criminal endangerment was defined in the code as a person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another.

**SEN. WHEAT** noted the testimony at the hearing was it would be helpful to the highway patrolman to have HB 141. Placing this issue into the traffic code would be helpful to them. He believed HB 105 was more comprehensive and would therefore be the better bill. The only thing it doesn't provide is the felony which is what is being added by the amendment. He suggested this amendment be added to HB 105 since several members of the Judiciary Committee were also on the Transportation Committee. If that failed, it could be added on the Senate Floor.

**SEN. MCGEE** pointed out (3) at the bottom of page 2 of HB 105 would provide for a felony. If a person causes bodily injury to another person while engaged in eluding a peace officer, the person is subject to the penalties of 45-5-205.

**SEN. WHEAT** withdrew his motion.

**Substitute Motion:** **SEN. WHEAT** moved that **HB 141 BE INDEFINITELY POSTPONED.**

**Discussion:**

**SEN. O'NEIL** raised a concern with HB 105, line 27. If a police officer is following the person and does not have his lights or siren on, the person would be eluding a peace officer. The definition of what constitutes eluding a peace officer in HB 141 is better than the definition in HB 105. He will provide this amendment to the Transportation Committee.

**Vote:** The motion carried unanimously.

**EXECUTIVE ACTION ON HB 155**

**Motion:** **SEN. WHEAT** moved that **HB 155 BE CONCURRED IN.**

**Substitute Motion:** **SEN. WHEAT** moved that **HB 155 BE AMENDED, HB015501.ash, EXHIBIT(jus63a02).**

**Discussion:**

**SEN. WHEAT** also provided a letter from **Janice Doggett, Montana Secretary of State's Office, EXHIBIT(jus63a03).** He claimed HB 155 needed to be amended to dovetail with HB 190. He has spoken to **REP. JENT** and **Ms. Doggett.** House Bill 155 was prepared pursuant to the interim committee before HB 190 was prepared.

**Vote:** The motion carried unanimously.

**Motion/Vote:** **SEN. WHEAT** moved that **HB 155 BE CONCURRED IN AS AMENDED.** The motion carried unanimously.

**HEARING ON HB 521**

**Sponsor:** **REP. JOE BALLYEAT, HD 32, BOZEMAN**

**Proponents:** **REP. JIM SHOCKLEY, HD 61, VICTOR**  
**Scott Restvedt, Valley Bail Bonds**  
**Kelly Reisbeck, Montana Bail Agents Association**  
**Earl Rowe, Montana Bail Agents Association**  
**Paul Jara, Arrow Bail Bonds**  
**Morrie Anderson, Anderson Bond Company**  
**Dave Crow, Valley Bail Bonds**  
**Alicia Pichette, State Auditor's Office**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. JOE BALLYEAT, HD 32, BOZEMAN**, introduced HB 521. He remarked that both the magistrates and the bail bondsmen supported this bill because there is ambiguity in the law. The proposed language clears up confusion about the proper use of bail bonds and also the rules regarding appearance of the defendant within 90 days.

**Proponents' Testimony:**

**REP. JIM SHOCKLEY, HD 61, VICTOR**, remarked the bond would only cover the appearance. It does not cover any misconduct during the period the person is awaiting trial. This bill makes it clear that this is an appearance bond only. If the person fails to show and the bail bondsman can induce the person to return within 90 days, their money is returned.

**Scott Restvedt, Valley Bail Bonds**, provided his written testimony, **EXHIBIT(jus63a04)**.

**Kelly Reisbeck, Montana Bail Agents Association**, rose in support of HB 521. This bill clarifies the language currently in law.

**Earl Rowe, Montana Bail Agents Association**, rose in support of HB 521.

**Paul Jara, Arrow Bail Bonds**, rose in support of HB 521.

**Morrie Anderson, Anderson Bond Company**, rose in support of HB 521.

**Dave Crow, Valley Bail Bonds**, rose in support of HB 521.

**Alicia Pichette, State Auditor's Office**, rose in support of HB 521.

**Opponents' Testimony:**

None

**Questions from Committee Members and Responses:**

**SEN. WHEAT** questioned whether the language on page 2, line 9, would contemplate an out-of-state facility.

**{Tape: 2; Side: A}**

**REP. BALLYEAT** believed the amendment was to include any detention center facility in the state.

**SEN. CROMLEY** asked if a person was on bail in Yellowstone County could they be delivered to a Gallatin County detention facility.

**Mr. Reisbeck** noted the current language stated the person should be returned to any peace officer in the state of Montana. Their goal is to bring them back to the county from which they were released. A problem could occur when the person being transported was creating a problem and it would be easier to take them to a facility in that county. This was the intent of the bill.

**SEN. O'NEIL** asked for clarification of line 23 on page 1. What would happen if the defendant had no excuse for his failure to appear. **REP. BALLYEAT** noted that was existing law.

**Closing by Sponsor:**

**REP. BALLYEAT** remarked that an effective date had not been discussed. If no effective date is mentioned the bill would not take effect until October. They would appreciate an earlier effective date and would like the language to state upon passage and approval.

**HEARING ON HB 489**

**Sponsor:** **REP. LARRY LEHMAN, HD 87, POWER**

**Proponents:** **Nancy Sweeney, Lewis and Clark County Clerk of the District Court, Montana Association of Clerks of District Court**  
**Mary Phippen, Montana Association of Clerks of District Court**  
**Harold Blattie, Montana Association of Counties (MACo)**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. LARRY LEHMAN, HD 87, POWER,** introduced HB 489 on behalf of the Montana Association of Clerks of the District Court. This bill addresses state payment of civil jury costs. The 2001 Legislature passed a bill providing for the state assumption of district courts. The language crafted for 3-5-901(1)(h) created a statewide inequity from one county to the next.



**Proponents' Testimony:**

**Nancy Sweeney, Lewis and Clark County Clerk of the District Court, Montana Association of Clerks of District Court**, presented her written testimony, **EXHIBIT(jus63a05)**. She further provided a letter from **Carole Carey, Carter County Clerk of the District Court, EXHIBIT(jus63a06)**.

**Mary Phippen, Montana Association of Clerks of District Court**, presented her written testimony, **EXHIBIT(jus63a07)**.

**Harold Blattie, Montana Association of Counties (MACo)**, noted page 2, lines 15 and 16, contained the intent of the bill. A distinction and a separation was made between a district court budget and the clerk of district court budget. In some of the counties, the expenses may have been paid through the clerk's budget but they were all through the district court fund. The term "budget" is an authority to spend while the word "fund" is where the money comes from. From an accounting and budgeting perspective, a serious inequity has been created between counties in Montana. There was an assumption made in SB 176 that all counties should have had some civil jury trial costs in either FY 98 or FY 99. This is actually not the case. The funding mechanism was contained in HB 124. Counties reported their actual FY01 costs, including civil jury trial costs, in a state assumed column and therefore the money has been reduced from the county's entitlement share. The situation is that the county's money has gone to the state but they are not eligible for reimbursement under the policy adopted by the district court council for reimbursement of those civil jury trial costs.

The amendment placed on the bill in the House was the effective date of July 1, 2003. This amendment was placed on the bill so this would be effective for the upcoming biennium and not have any fiscal impact on the current biennium.

**Opponents' Testimony:**

None

**Questions from Committee Members and Responses:**

**SEN. CROMLEY** noted the fiscal note did not address the issue of the counties that do not pay out of the district court budget.

**Ms. Sweeney** did not know why this had not been addressed in the fiscal note.

**SEN. CROMLEY** questioned whether page 2, line 15, would accomplish the same thing as striking all the language after the words

"civil jury trials". Subsection (h) would state "all district court expenses associated with civil jury trials". **Ms. Sweeney** believed the suggested language would be much clearer. They were trying to address the fact that certain fees like expert witness fees generally paid by counsel, would not be covered. The intent of the bill was not to assume more expenses than currently paid by the counties.

**SEN. MCGEE** asked **Chief Justice Karla Gray** for her comments on the bill. **Chief Justice Gray** stated she strongly supported the concerns of the county clerks of district courts in regard to the inequities involved in the drafting of the language. She has no doubt that the drafters of SB 176 did not intend this inequitable result between the various counties. The fiscal note shows no impact in this current fiscal year. The reason is there is still fallback responsibility to the counties for indigent defense and other matters during FY03. If additional costs for civil jury trials were picked up under an immediate effective date, the net impact would be more civil jury trial expenses would be paid and there would be even less money to pay indigent expense costs. In regard to the impacts in FY04 and FY05 set out in the fiscal note, this bill did not go through House Appropriations so the costs have not been addressed.

*{Tape: 2; Side: B}*

**Closing by Sponsor:**

**REP. LEHMAN** closed on HB 489.

**HEARING ON HB 496**

**Sponsor:** **REP. ARLENE BECKER, HD 18, BILLINGS**

**Proponents:** **Judy Wang, Assistant City Attorney - Missoula**  
**Ali Bovingdon, Department of Justice**  
**Beth Satre, Montana Coalition Against Domestic and Sexual Violence**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. ARLENE BECKER, HD 18, BILLINGS**, presented HB 496. Two years ago the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act was passed. It provided a person who has a protection order legally issued by another state will receive enforcement of that protection order by the state to which they move. House Bill 496 adds the items of sexual assault and

stalking. Persons get protective orders for many reasons. They often flee the dangerous situation they are in. They try to move in with families or friends. They get a new job and try to start a new life. It is important that their protective order in another jurisdiction is honored by the state to which they move. The language on page 2, line 2, adds that a temporary protective order is also honored by the state.

**Proponents' Testimony:**

**Judy Wang, Assistant City Attorney - Missoula**, presented a hypothetical example. Paul, a prosecutor from South Dakota, prosecuted Steve the stalker. Steve turned his anger on Paul and started to stalk Paul. He followed him home, called him at home, called him at work, made threats, and delivered bullets to the office. Paul asked for an order of protection in South Dakota against Steve. The judge issued an order of protection to Paul which restricted Steve from having contact with him. Paul traveled to Billings for a conference. Shortly after checking into a hotel, Steve showed up. When Paul called law enforcement, he was told the order of protection could not be enforced because it was based on stalking. Montana does not give full faith and credit to orders of protection from another state based on stalking. Another problem for Paul was that the order had just been issued and there had not yet been a hearing. House Bill 496 would fix these problems. She provided written testimony, **EXHIBIT (jus63a08)**.

**Ali Bovington, Department of Justice**, rose in support of HB 496.

**Beth Satre, Montana Coalition Against Domestic and Sexual Violence**, rose in support of HB 496.

**Opponents' Testimony:**

None

**Questions from Committee Members and Responses:**

**SEN. O'NEIL** questioned whether these orders would include children. **Ms. Wang** noted for the most part these orders would not address children because generally persons who have orders of protection based upon stalking or sexual assault would not have children issues between the offender and the petitioner. There isn't much in HB 496 that would impact spouses and children.

**SEN. CROMLEY** asked the number of states that have adopted the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act and whether or not the amendment is part of the

Uniform Act and has also been adopted by other states. **Ms. Wang** believed seven states have adopted the act. The amendment made by the House Judiciary Committee was verbatim an adoption of recommended language.

**Closing by Sponsor:**

**REP. BECKER** stated adding sexual assault and stalking to our protective order laws is very important. The first 20 days of a protective order seem to be the most dangerous time for a sexual assault or stalking victim.

**EXECUTIVE ACTION ON HB 496**

**Motion:** **SEN. WHEAT** moved that **HB 496 BE CONCURRED IN.**

**Substitute Motion:** **SEN. O'NEIL** moved that **HB 496 BE AMENDED.**

**Discussion:**

**SEN. O'NEIL** explained his amendment. On page 2, line 19, after the word notice he would insert the language "including notice of how the order might affect the respondent's Second Amendment rights under the United States Constitution". When a court issues a protective order, under the Brady bill the person would lose his or her right to bear arms.

**SEN. WHEAT** pointed out the section referred to a foreign protection order. The other states may not have the requirement that persons be advised of their Second Amendment rights.

**Ms. Lane** claimed this is a uniform act and with the amendment it would no longer be a uniform act.

**SEN. O'NEIL** maintained this language would let other states know there is a problem involved.

**SEN. MCGEE** summarized the language would read, "a foreign protection order is valid if it was issued after the respondent was given reasonable notice . . . including notice about the possible loss of Second Amendment rights and had an opportunity to be heard before the court issued the order . . .".

**SEN. WHEAT** did not like the idea of passing legislation to send messages to other states about what should be included in their orders. If those states have laws that require notification and Second Amendment rights, that is fine. It would throw roadblocks into a uniform statute.

**SEN. CROMLEY** raised a concern that the amendment would invalidate all protective orders and the ability to enforce them in this state.

**SEN. O'NEIL** remarked one spouse could take the children from Montana. A protective order may be obtained in the new state. The person would need to travel to the other state to respond to the order. This would deprive them of their Second Amendment rights without having the ability to be heard at the hearing.

**SEN. MCGEE** was concerned about how a foreign government could be told that their order needed to have the statement.

**SEN. O'NEIL** hoped that if five or six states did so, the other states would realize that they should start notifying persons that they may lose their right to keep and bear arms.

**Ms. Lane** pointed out this would not tell the other courts what they must do but it would be telling law enforcement in Montana that they could not support the order unless the laws of the other state required the notice.

**Vote:** The motion to amend failed with O'NEIL voting aye.

**Vote:** The motion to concur carried unanimously.

#### **EXECUTIVE ACTION ON HB 308**

**Motion:** **SEN. PERRY** moved that **HB 308 BE CONCURRED IN.**

**Substitute Motion:** **SEN. O'NEIL** moved that **HB 308 BE INDEFINITELY POSTPONED.**

#### **Discussion:**

**SEN. WHEAT** liked the concept but believed the bill was so broad that everyone would be swept in. It is important that the punishment fit the crime.

Tape 3a

**SEN. MCGEE** remarked lower grade sexual offenses did not last a lifetime.

**Ms. Lane** affirmed only class three offenders lasted a lifetime.

**SEN. MCGEE** did not support the motion to indefinitely postpone HB 308. The taxpayer pays the bill if the offender doesn't. He has no problem with a sexual offender paying the bill.

**SEN. CURTISS** spoke against the motion. She believed the bill should be passed. She agreed that it should just refer to level three offenders.

**SEN. O'NEIL** maintained while they are under the jurisdiction of the court, this involves a criminal act. There is a duty to punish them to the full extent of the law. This new theory would be after they have served their time they would remain registered for the rest of their life. This will protect society but this is a responsibility of society.

**Ms. Lane** pointed out a sexual offender would have to register for life. Violent offenders would have to register for ten years. A sexual offender can petition the court, after ten years, to be removed from that requirement.

**Vote:** The motion failed with O'NEIL voting aye.

**Substitute Motion:** **SEN. CURTISS** moved that **HB 308 BE AMENDED.**

**Discussion:**

**SEN. CURTISS** explained her amendment. This should address the level three offenders. This is the type of offender who is impossible to rehabilitate.

**SEN. MCGEE** summarized that the amendment would then only refer to class three offenders. He pointed out that classes one and two have also been involved with sexual violations. He questioned whether or not these folks should also be held responsible.

**SEN. CURTISS** wanted all sexual offenders to be responsible, but in deference to some people's impressions, she believed that may not be possible.

**Ms. Lane** explained the amendment would be on page 2, (5) where the amendments to the bill appear. On line 5, the language would state "except as provided in (5)(b)". Subsection (5) would need to be put back to its existing language and then (b) would need to be created to state that level three offenders would need to pay the fees and the others wouldn't.

**SEN. WHEAT** liked the amendment. For level one and two offenders, there could be a provision built into the sentence that they would need to pay during the term of their sentence. This could

be mandatory for life for the level three offenders but there could be discretion given to the judge for the level one and two offenders.

**SEN. MCGEE** spoke against the motion because he did not see a difference between the levels. If someone is a sexual violator, it is their responsibility, not the taxpayers, to pay for the costs involved in notifying the public and the victim.

**SEN. CROMLEY** supported the motion. This ought to be addressed at the time of sentencing. Unfortunately, the bill does not do that. The responsibility for paying the cost should go to the person sentenced. He did raise a concern that the offender could object to this on the basis that he or she would receive an additional penalty through this statute, which is not a part of the sentence.

**SEN. CURTISS** accepted **SEN. WHEAT's** suggestion.

**Ms. Lane** clarified that the amendment would include the suggestion that this be discretionary with all other offenders and mandatory for level three offenders.

**SEN. PERRY** added the language stated "if able to pay shall pay".

**Vote:** The motion carried with **PERRY** and **MCGEE** voting no.

**Motion/Vote:** **SEN. PERRY** moved that **HB 308 BE CONCURRED IN AS AMENDED**. The motion carried with **MCGEE** voting no.

#### **EXECUTIVE ACTION ON HB 358**

**Motion:** **SEN. CROMLEY** moved that **HB 358 BE CONCURRED IN**.

#### **Discussion:**

**SEN. CROMLEY** believed a person was entitled to a jury trial and this bill will allow the state and the counties to reduce a lot of expenses by having one jury trial. He would have liked to see this apply to all counties because it is permissive.

**SEN. WHEAT** agreed. He raised a concern in converting to a court of record it would be important for the judges in those courts to be attorneys. He understands the idea of the people's court. Without a trial de novo, the district court would need to review that record for issues of error.

**SEN. O'NEIL** also believed this should apply to all counties.

**SEN. PERRY** would like to see this provision extended permissively to all counties. He raised a concern with naming first class counties.

**SEN. CURTISS** asked who would currently be responsible for training of the justices of the peace.

**SEN. CROMLEY** noted before the judges began sitting they would go through a very intensive training period. They are given a lot of hands-on training in terms of handling trials.

**SEN. WHEAT** added the training took place at a national judiciary college in Reno. Judges from across the country participate in this college.

**SEN. MCGEE** questioned how difficult it would be to allow for all counties to be able to have this choice.

**Ms. Lane** did not see any difficulty with the matter because that is how the bill was introduced. She pointed out that the Constitution requires the right to jury trial is inviolate. She did not know whether the bill would meet constitutional challenge. Article VII, Section 5 of the Constitution states there shall be elected in each county at least one justice of the peace. Section 3-10-101, which is in the bill, states in statute there must be at least one justice court in each county. One of the witnesses at the hearing pointed out, if the justice courts become county courts, would the constitutional requirement of a justice court be met.

**SEN. MCGEE** summarized the bill would allow the counties to make the justice courts county courts and then make these courts to be courts of record. If the definition of "county court" was stricken from the language, this would still be a justice court. The justice courts could be made courts of record if the county chooses to do so. Would this overcome the issue?

**Ms. Lane** believed it would. She did not know why the bill was drafted to create the new entity of county courts rather than requiring justice courts to become courts of record.

**Substitute Motion:** **SEN. O'NEIL** moved that **HB 358 BE AMENDED.**

**Discussion:**

**SEN. O'NEIL** explained his amendment. He would allow counties to have their justice courts become their courts of record and strike the language referring to county courts. This would be extended to all counties.



**SEN. CROMLEY** argued against the motion. There could be a problem in some counties. In the counties that do not make their justice courts a court of record, a defendant would have a right to appeal and receive a new jury trial. There would be a discrepancy in that in some counties a person would be given two jury trials while in other counties they would only be entitled to one jury trial. After the hearing on HB 14, the constitutional amendment to limit misdemeanor trials to either lower or district court, he reviewed the case referenced. The court mentioned that Article VI, Section 42 of the Montana Constitution clearly allows for the possibility that laws might be enacted making appeals to district court from justice courts not de novo. The court added that provision of the Constitution would not be implicated in the case.

**Ms. Lane** will prepare the amendments as discussed.

**SEN. O'NEIL** withdrew his motion to amend.

**SEN. CROMLEY** withdrew his motion to concur.

#### EXECUTIVE ACTION ON HB 390

Motion: **SEN. CROMLEY** moved that **HB 390 BE CONCURRED IN.**

Substitute Motion: **SEN. O'NEIL** moved that **HB 390 BE AMENDED.**

**Ms. Lane** explained the bill had been discussed by the Committee at one time and **SEN. O'NEIL** offered HB039001.avl which would provide that a person who brings an action on the person's own behalf without an attorney may receive attorneys fees at the judge's discretion. This amendment failed.

*{Tape: 3; Side: B}*

**SEN. CROMLEY** withdrew his motion to concur in HB 390.

#### EXECUTIVE ACTION ON HB 453

Motion: **SEN. O'NEIL** moved that **HB 453 BE CONCURRED IN.**

Substitute Motion: **SEN. CROMLEY** moved that **HB 453 BE AMENDED, HB045303.ajm., EXHIBIT(jus63a09).**

Discussion:

**SEN. CROMLEY** did not believe the language in the statute placed an obligation on the defendant to pay the costs. His amendment stated the inmate was responsible for the inmate's medical and dental expenses and is obligated to repay the department. He also made it clear that this refers to assets or income.

**Vote:** The motion carried unanimously.

**Motion/Vote:** **SEN. CROMLEY** moved that **HB 453 BE CONCURRED IN AS AMENDED.** The motion carried unanimously.

**EXECUTIVE ACTION ON HB 521**

**Motion:** **SEN. PERRY** moved that **HB 521 BE CONCURRED IN.**

**Substitute Motion:** **SEN. PERRY** moved that **HB 521 BE AMENDED.**

**Discussion:**

**SEN. PERRY** remarked that his amendment would place an effective date on the bill to be effective upon passage. On line 1, page 2, he would place the word "only" before the word "if".

**Ms. Lane** explained that **REP. SHOCKLEY** intended that they have the opportunity to surrender one of these people to a detention center facility in another state. It was drafted that way intentionally.

**Vote:** The motion carried unanimously.

**Motion:** **SEN. PERRY** moved that **HB 521 BE CONCURRED IN AS AMENDED.**

**Substitute Motion:** **SEN. O'NEIL** moved that **HB 521 BE AMENDED.**

**Discussion:**

**SEN. O'NEIL** maintained line 9 should state any detention center facility of this state otherwise the cost to the state of Montana may be considerable.

**Ms. Lane** stated that **REP. SHOCKLEY** had stated that there may be medical conditions or other reasons why they cannot be transported back and they need to surrender them to a facility in another state. It was mentioned during the questioning portion of the hearing, if the bail bondsman does surrender the person out of state, it may be the bail bondsman's responsibility to pay the cost to have him brought back to the state.

**SEN. O'NEIL** noted this was a change in policy for the state. Previously, they could be surrendered to any peace officer of this state.

**Vote:** The motion carried with **CROMLEY** voting no.

**Motion/Vote:** **SEN. O'NEIL** moved that **HB 521 BE CONCURRED IN AS AMENDED**. The motion carried unanimously.

**EXECUTIVE ACTION ON HB 61**

**Discussion:**

**SEN. PERRY** explained the Subcommittee on HB 61 had met and decided to leave HB 61 as indefinitely postponed.

**ADJOURNMENT**

Adjournment: 11:15 A.M.

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SEN. DUANE GRIMES, Chairman

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JUDY KEINTZ, Secretary

DG/JK

**EXHIBIT** (jus63aad)